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BOOK REVIEWS

Guide to the law and legal literature of Argentina, Brazil and Chile. By EDWIN M. BORCHARD, Professor of Law, Yale University; formerly Law Librarian, Library of Congress (1911-1916). [Library of Congress]. (Washington: Government Printing Office, 1917. Pp. 523. Spanish and Portuguese Glossaries. \$1.00)

Guide to the Law and Legal Literature of Spain. Prepared under the Direction of Edwin M. Borchard . . . by THOMAS W. PALMER, Jr., of the Birmingham, Ala., Bar. [Library of Congress.] (Washington: Government Printing Office, 1915. Pp. 174. Glossary. \$0.50.)

De gran mérito y evidente utilidad es la obra emprendida por distinguidos juristas norteamericanos, bajo los auspicios de la Biblioteca del Congreso, con el objeto de presentar en forma breve y completa una guía bibliográfica de las obras de derecho y de los cuerpos legales de España y de los distintos países de Hispano América. Con los grandes recursos de que dispone tan poderosa institución, le ha sido posible reunir obras costosas o poco comunes y aun enviar a países extranjeros personas competentes exclusivamente dedicadas al estudio de las cuestiones de derecho y de la bibliografía jurídica, pudiendo poner a su servicio en esta labor a las mejores inteligencias del país.

La guía correspondiente a los tres países más poderosos de la América del Sur, Argentina, Brasil y Chile, es obra del Dr. Edwin M. Borchard, Profesor de Derecho en la Universidad de Yale, y por algún tiempo

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Of great merit and obvious utility is the work undertaken by distinguished jurists of North America, under the auspices of the Library of Congress, for the purpose of presenting briefly and completely a bibliographical guide to the works on law and on the legal bodies of Spain and of the several countries of Hispanic America. Thanks to the vast resources commanded by so powerful an institution, it has been possible for it to collect costly and little known works and even to send competent persons to foreign countries for the sole purpose of studying questions of law and of juristic bibliography, being enabled to obtain for this task the service of the best minds of the country.

The guide relating to the three most powerful countries of South America, namely, Argentina, Brazil, and Chile, is the work of Dr. Edwin M. Borchard, Professor of Law in Yale University, and sometime librarian of the Law Division

bibliotecario del departamento de derecho de la Biblioteca del Congreso. Es fruto de los estudios del Dr. Borchard en la mencionada biblioteca y de los que realizó en un viaje especial a la América del Sur, durante el cual contó con la ayuda de prominentes jurisconsultos argentinos, chilenos y brasileños.

El ordenamiento de la materia es excelente por su método. Al tratar de cada uno de los países, después de una breve introducción en que se expone concisamente la organización política de ellos, se hace una enumeración de las obras de carácter bibliográfico publicadas, y que pueden servir de guía provisional al estudiante. Con excepción del Brasil, los países hispanoamericanos son bastante pobres en materia de bibliografías jurídicas; y aun el Brasil mismo no las posee en grado tal que resulte inútil la publicación de una obra como la que estamos analizando.

Entrando de lleno en el estudio de la legislación, el autor enumera las obras que de ella tratan, ya sea en lo relativo a las provincias o a los estados, según que se trate de la República Argentina o del Brasil, pues esta materia no puede tocarse en lo relativo a Chile, que posee un gobierno unitario, por constituir una república central. Después de citar con detalle las memorias de los tribunales, los digestos que de la jurisprudencia han hecho los diversos autores, así como las obras y periódicos legales, el libro ofrece una exposición de los libros de derecho

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of the Library of Congress. The volume is the fruit of Dr. Borchard's study in the above named library and of his studies while on a special visit to South America, during which he was aided by prominent Argentinian, Chilean, and Brazilian jurists.

The arrangement of the materials is excellent as to method. In his treatment of each one of the countries, after a brief introduction, wherein the political organization is concisely set forth, a list is given of the published works of a bibliographical character which may be used by the student as a provisional guide. With the exception of Brazil, the Hispanic-American countries are quite poor in juristic bibliographical materials; and even Brazil itself does not possess them to such an extent as to render useless the publication of a book like the one under review.

Taking up in full the study of legislation, the author lists the works treating thereof, whether they relate to the provinces or to the states—so far as Argentina and Brazil are concerned, inasmuch as material of this class does not exist so far as Chile is concerned, that country being a centralized republic. After citing in detail court reports, digests of jurisprudence, made by various authors, as well as legal works and periodicals, the book sets forth books on law which are

que sirven para la preparación de los abogados y de los libros en que, de una manera bastante limitada todavía, aparecen las tentativas a reducir a sistema las jurisprudencias de países en donde la inspiración legal es predominantemente europea.

Por último aparecen catalogadas las obras que tratan de puntos particulares de derecho, y entre ellas figuran los códigos, con una breve exposición de su origen y evolución histórica. Ocupa el primer lugar el Código civil, al cual siguen el Código de Comercio, las leyes orgánicas de tribunales civiles, el Código de procedimientos civiles y las leyes relativas a la organización y el funcionamiento del notariado; el Código penal y el de procedimientos penales; el derecho constitucional, el derecho administrativo, las leyes militares, el derecho eclesiástico y por fin el derecho internacional público y privado. Casi todos los nombres de obras van acompañados de alguna brevísima observación relativa a los méritos personales del autor, a la reputación de la obra y al valor que ésta pueda tener para el estudiante de las leyes americanas.

En lo general el criterio que anima al autor es a un tiempo sólido, justo y reservado. Muy difícil sería señalar un sólo punto en el cual sus juicios pudieran merecer la tacha de apasionados. Quizás alguna que otra vez haya pecado por benevolencia, atribuyendo valor real a obras que carecen de él o que lo tienen sólo en grado muy relativo. La fecundidad de que algunos países dan muestra en la producción de

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used in the preparation of lawyers, and books in which appear the attempts (still quite limited) to reduce to a system the jurisprudence of countries where the legal inspiration is preeminently European.

Lastly, is given a catalogue of the works treating of special points of law, among which are the codes, with a short explanation of their historical origin and evolution. The Civil Code holds first place. After it come the Commercial Code, the organic law of the civil courts, the Code of Civil Procedure, and the laws relating to the organization and working of the notarial profession; the Penal Code and the Code of Criminal Procedure; constitutional law, administrative law, military laws, ecclesiastical law, and lastly public and private international law. Almost all the titles of works are accompanied by a very brief remark touching the personal merits of the author, the reputation of the work, and its probable value to the student of American laws.

In general, the judgment exercised by the author is at once sound, just, and conservative. It would be very difficult to note one single point in which his judgment could merit being called prejudiced. He has perhaps sinned here and there through kindness, in attributing a real value to works which have no value, or which are of value only to a very limited degree. The fecundity ex-

obras de derecho débese principalmente a que los autores por regla general se dedican al estudio de puntos particulares, tratando de dejar agotada la materia y de producir obras de gran peso y autoridad. Labor es ésta meritoria, pero raras veces lucida y grata. Es trabajo de detalle, propio para espíritus minuciosos que quieren contribuir al acervo de la ciencia con algo muy pequeño, pero inquebrantable y definitivo. Las mentes septentrionales parecen estar especialmente organizadas para trabajos de esta naturaleza. No así los hombres de origen hispano, los cuales, con excepciones que es justo tener en cuenta, gustan más de las vastas perspectivas y de los caminos amplios y largos. Para que un punto particular atraiga el esfuerzo de sus investigaciones requiérese que dicho punto asuma proporciones tales que su mala interpretación sea de consecuencias muy trascendentales. Así se explica que el recurso de *amparo* haya dado fecundo tema a los jurisconsultos mejicanos, y que en los momentos actuales sea objeto de brillantes disertaciones el artículo 74 del Reglamento Uniforme de La Haya sobre letras de cambio y pagarés. Pero, por regla general, los letrados sudamericanos hacen estudios completos sobre temas amplios; publican comentarios sobre los códigos o preparan ediciones anotadas de éstos, o escriben acerca de las doctrinas más en boga en Europa, o muestran de una u otra manera sus conocimientos, generalmente muy sólidos, y su criterio, las más de las veces bien ponderado y justo.

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hibited by some countries in the production of works on law, is due primarily to the fact that the authors as a general rule devote themselves to the study of individual points, trying to exhaust the subject and to produce works of great weight and authority. This is a meritorious task, but rarely is it pleasant and brilliant. It is a work of detail suitable for minute minds which desire to contribute to the sum total of knowledge a very slight but inviolable and definitive addition. Minds of the north seem to be peculiarly organized for tasks of this nature. Not so the men of Hispanic origin who, with exceptions that it is proper to keep in mind, enjoy rather vast perspectives and broad and long highways. In order that one special point may attract the effort of their investigations, it needs that said point assume proportions such that a poor interpretation of it may bear very serious consequences. Thus is explained the fact that the special feature called *amparo* has proven a fertile theme to Mexican jurists, and that at the present time, article 74 of the Uniform Regulations of The Hague on bills of exchange and promissory notes is the object of brilliant dissertation. But, as a general rule, South American lawyers make complete studies on broad themes. They publish commentaries on the codes or prepare annotated editions of them, or write about the doctrines more or less in vogue in Europe, or show their knowledge in one way or another, which is usually very solid, and their critical ability which is usually very weighty and sound.

Obras de esta naturaleza aparecen catalogadas por centenares en la guía de que hablamos y, como es natural, algunas de ellas no están a la altura que requiere un espíritu ilustrado. Al juzgarlas es donde, en nuestro concepto, podría tildarse al Dr. Borchard de benévolo, ya que rara vez expresa un juicio desfavorable en términos que alejaran al estudiante de toda investigación respecto a las obras mencionadas. Y en materia científica no hay derecho para ser benévolo.

Por otra parte, el autor tuvo que tropezar con el escollo natural en una "Gufa," que tiene que ser algo más que un mero catálogo y algo menos que un estudio crítico. Lo primero no indicaría nada al estudiante. Lo segundo sería labor penosísima y larga, a más de inútil por lo que respecta a esa gran cantidad de libros que o son muy malos o no son suficientemente buenos para merecer los honores de la crítica. La difícil posición en que se encontró el autor lo llevó en muchos casos a la simple enumeración de obras, a veces acompañada de expresiones tales como "merece citarse" o "debemos tomar en cuenta", que no dicen nada, o a la emisión de juicios demasiado breves, lapidarios casi, que inspiran el deseo de una ulterior justificación, aun cuando sea muy breve. El autor de estas líneas tiene la satisfacción de conocer personalmente al Dr. Borchard y está seguro de que cuando él ha dicho algo, lo ha meditado y estudiado bien, y tiene peso y autoridad; pero el común de los lectores siente que algo falta. Es tendencia muy genera-

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Works of this kind are listed by hundreds in the *Guide* which we are discussing, and as is natural, some of them do not reach the height demanded by an enlightened intellect. It is in the evaluating of them that, in our judgment, Dr. Borchard might be accused of kindliness, since he very rarely expresses an unfavorable opinion in terms that will prevent the student who is making any investigation from using the abovenamed works. In scientific matters, however, one has no right to exercise kindliness.

On the other hand, the author had to struggle with the natural embarrassments of a guide which must be something more than a mere catalogue and somewhat less than a critical study. The first would mean nothing to the student. The second would be a very tiresome and long task, and more than useless because of the very great number of books that are either very poor or not good enough to merit the honor of a criticism. The difficult position in which the author found himself led him in many instances to the simple listing of works, at times accompanied with expressions such as "deserves to be cited" or "we must take into account"—which mean nothing—or in the utterance of opinions that are too short—lapidary almost—which make one wish for further explanation, even though such be very brief. The author of the present lines has the satisfaction of knowing Dr. Borchard personally, and is sure that when Dr. Borchard has said anything, he has previously meditated over it and studied it at length, and

lizada la de esperar que quien cita autores exprese cuidadosamente la obra, la página, la línea, la edición, la casa editora y otros requisitos que demuestren su veracidad; y no existe en el mismo grado la exigencia de fundamentar todo juicio que se emite. Parécenos más necesario lo segundo que lo primero, ya que dudar de la afirmación de un hecho es casi ofensivo, mientras que pedir la explicación y los fundamentos de una opinión es una actitud propia del espíritu investigador. Pero, repetimos, esto no es falta del autor, sino, más bien, de la naturaleza de la obra.

Como es natural, este libro pone de manifiesto la influencia del derecho español en las repúblicas hispanoamericanas. Esa influencia es preponderante, pero ha sufrido no pocas modificaciones producidas por la naturaleza de la evolución sufrida en estos países desde la independencia hasta nuestros días, y por los estudios realizados por los letrados del siglo diecinueve y lo que va del siglo veinte en las legislaciones europeas, especialmente las de Alemania, Francia e Italia, y las de la España moderna, así como, y muy principalmente en lo que se refiere al derecho constitucional, en la legislación de los Estados Unidos de la América del Norte. Por supuesto que el derecho brasileño ha sufrido directamente la influencia de las leyes portuguesas, pero apenas parece necesario decir que en el fondo y en los orígenes

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that what he says has weight and authority; but readers in general feel that there is something lacking. It is a very general tendency to expect that he who cites authors should carefully give the work, the page, the line, the edition, the publisher, and the other requisites that will prove his veracity; but that he is not under the same necessity of backing up every opinion that he expresses. The second seems to us more necessary than the first, since it is almost offensive to doubt the affirmation of a fact, while to ask for the explanation of an opinion and its foundation is the proper attitude of an investigating mind. But we repeat, this is not the fault of the author but of the nature of the work.

As is natural, this volume shows the influence of Spanish law on the Hispanic American republics. That influence is a preponderating one, but it has suffered not a few modifications which have been brought about by the nature of the evolution that has taken place in these countries from the era of independence to our own time, and by the studies made by lawyers in the nineteenth century and thus far in the twentieth century, of European legislation, especially the legislation of Germany, France, Italy, and of modern Spain, as well as, and very primarily of matters referring to constitutional law in the legislation of the United States of North America. Of course, Brazilian law has been directly influenced by Portuguese laws, but it scarcely seems necessary to say that there

no hay diferencias esenciales entre la influencia portuguesa y la influencia española propiamente dicha.

Con atinado criterio, el autor señala los autores de más sólida doctrina y las obras de mayor utilidad. Al mencionar el código civil brasileño, rinde el tributo merecido a Augusto Teixeira de Freitas, así como al mencionar el código civil chileno da el lugar que merece al ilustre americano Andrés Bello, una de las glorias más legítimas del continente. De esta manera, si no todo lo digno de censura es censurado, lo que es digno de alabanza es puesto en alto para conocimiento y admiración de los lectores. De aquí que, aun cuando no se llegue al estudio de las obras mencionadas en la Guía, la simple lectura de ésta basta para dar un concepto general de la no despreciable obra levada al cabo por los grandes juristas americanos.

Por el mismo estilo y conforme al mismo plan está escrita la Guía del Derecho y la Literatura Legal de España, por Palmer. Nótase en este libro una amplitud en la expresión de los juicios algo mayor que en el del Dr. Borchard, lo cual hace su lectura un poco más fácil para el lector común.

Ambos libros deben formar parte de la biblioteca de todo el que tenga interés en materias legales americanas, y deben ser consultados por todo el que quiera adquirir un conocimiento bastante aproximado

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is no essential difference at bottom and in origin between the Portuguese influence and the Spanish influence properly so called.

With accurate judgment, the author points out the authors of more sound doctrine and the most useful works. In mentioning the Brazilian civil code, he bestows merited tribute upon Augusto Teixeira de Freitas; as well as when mentioning the Chilean code, he gives the illustrious American, Andrés Bello, one of the most legitimate glories of the continent, the place that he merits. In this way, if all that deserves censuring is not censured, what is deserving of praise is brought out clearly to the gaze and admiration of readers. Thus, even if one do not study the works mentioned in the *Guide*, the mere reading of the *Guide* is enough to give one a general idea of the not despicable work accomplished by great American jurists.

In the same style and conforming to the same plan, is written Palmer's *Guide to the Law and Legal Literature of Spain*. It is to be noted that in this latter book, opinions are given at somewhat greater length than in the volume by Dr. Borchard, which makes its reading a bit easier for the general reader.

Both books should form part of the library of all persons who have an interest in American legal matters, and should be consulted by all persons who desire to obtain a sufficiently accurate knowledge of this important phase of the civiliza-

de esta faz importantísima de la civilización del continente y de la gloriosa península ibérica, a la cual debe su ser político y lo más característico de su cultura.

GUILLERMO A. SHERWELL.

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tion of the continent and of the glorious Iberian Peninsula to which the continent owes its political existence and the most characteristic part of its culture.

GUILLERMO A. SHERWELL.

Trade and navigation between Spain and the Indies in the time of the Hapsburgs. By CLARENCE HENRY HARING, Ph.D., Assistant Professor of History in Yale University. (Cambridge: Harvard University Press, 1918. Pp. xxvii, 371. \$2.25)

Historia del Comercio con las Indias durante el Dominio de los Austrias. By D. GERVASIO DE ARTIÑANO Y DE GALDÁCANO, Professor de la Escuela Central de Ingenieros Industriales. (Barcelona: Oliva de Vilanova, 1917. Pp. 350.)

Mr. Haring's book is a most valuable contribution to a fundamental part of Spanish-American History. The subject of which it treats has not received hitherto its due share of attention; the English accounts are meagre; the Spanish treatises, for the most part, antiquated. This neglect may be partly attributable to the peculiarly complicated nature of the topic. With bewildering frequency the Spanish Government altered its regulations respecting the American trade; its policies were unstable. Hence the subject does not lend itself to broad and general treatment. Mr. Haring has used what is probably the best method. Analysing his topic minutely, he traces, separately, the historical development of each of its many phases. He presents a great amount of detailed information, gathered from many sources, both printed and manuscript. For reasons given in his bibliography he has, when possible, avoided using the Laws of the Indies as a sole authority for any of his statements.

The book is divided into two main parts, dealing respectively with Trade and Navigation. The first chapter, on The Seville Monopoly, describes the policies of the Crown respecting the Indian trade before the creation of the Casa de Contratación; the establishing of the Casa at Seville; the rivalry of Cadiz; the liberal provision of 1529 which permitted vessels to sail from several other ports to the Indies; and the